



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2016-0241]

RIN 1625-AA00

Safety Zone; Swim Around Charleston; Charleston, SC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary moving safety zone during the Swim Around Charleston, a swimming race occurring on the Wando River, the Cooper River, Charleston Harbor, and the Ashley River, in Charleston, South Carolina on September 25, 2016. The temporary safety zone is necessary for the safety of the swimmers, participant vessels, spectators, and the general public during the event. The temporary safety zone will restrict vessel traffic in portions of the Charleston Harbor and surrounding rivers. Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port Charleston or a designated representative.

DATES: This rule is effective on September 25, 2016 from 8:45 a.m. until 3:45 p.m.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov> type USCG-2016-0241 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant John Downing, Sector Charleston Office of Waterways Management, Coast Guard; telephone (843) 740-3184, e-mail John.Z.Downing@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On March 17, 2016, Kathleen Wilson notified the Coast Guard that she will be sponsoring the Swim Around Charleston from 9 a.m. to 3:30 p.m. on September 25, 2016. In response, on June 6, 2016, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone, Swim Around Charleston; Charleston, SC. There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this special local regulation. During the comment period that ended July 7, 2016, we received no comments.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the Federal Register. Delaying the effective date of this rule would be impracticable due to the date of the event. The Coast Guard did not receive any adverse comments during the period outlined in the NPRM with regard to this rule.

III. Legal Authority and Need for Rule

The legal basis for this rule is the Coast Guard's Authority to establish regulated navigation areas and other limited access areas: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1,

6.04-1, 6.04-6, and 160.5; and Department of Homeland Security Delegation No. 0170.1.

The purpose of the rule is to ensure the safety of the swimmers, participant vessels, spectators, and the general public life during the Swim Around Charleston.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published June 6, 2016. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a safety zone from 8:45 a.m. to 3:45 p.m. on September 25, 2016. The safety zone will cover a portion of the waters of the Wando River, Cooper River, Charleston Harbor, and Ashley River, in Charleston, South Carolina. Approximately 120 swimmers are anticipated to participate in the race. Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Charleston by telephone at (843) 740-7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative. The Coast Guard will provide notice of the safety zone by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and executive orders, and we discuss First Amendment rights of protesters.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of

available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

The economic impact of this rule is not significant for the following reasons: (1) the temporary safety zone will be enforced for a total of seven hours; (2) the safety zone will move with the participant vessels so that once the swimmers clear a portion of the waterway, the safety zone will no longer be enforced in that portion of the waterway; (3) although persons and vessels may not enter, transit through, anchor in, or remain within the safety zone without authorization from the Captain of the Port Charleston or a designated representative; they may operate in the surrounding area during the enforcement period; (4) persons and vessels may still enter, transit through, anchor in, or remain within the safety zone if authorized by the Captain of the Port Charleston or a designated representative; and (5) the Coast Guard will provide advance notification of the safety zone to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C.

605(b) that this rule will not have a significant economic impact on a substantial number of small entities. While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons discussed in the Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of

government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary safety zone.

This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist and a Categorical Exclusion Determination was completed for 2016. The environmental analysis checklist and Categorical Exclusion Determination are available in the docket folder where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165 -- REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 160.5; and Department of Homeland Security Delegation No. 0170.1.

- 2 . Add § 165.T07–0241 to read as follows:

§ 165.T07-0241 Safety Zone; Swim Around Charleston, Charleston, SC.

(a) Regulated area. The following regulated area is a moving safety zone: all waters within a 50-yard radius in front of the lead safety vessel preceding the first race participants, 50

yards behind the safety vessel trailing the last race participants, and at all times extend 100 yards on either side of safety vessels. The Swim Around Charleston swimming race consists of a 12 mile course that starts at Remley Point on the Wando River in approximate position 32°48'49"N, 79°54'27"W, crosses the main shipping channel of Charleston Harbor, and finishes at the General William B. Westmoreland Bridge on the Ashley River in approximate position 32°50'14"N, 80°01'23"W. All coordinates are North American Datum 1983.

(b) Definition. The term “designated representative” means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Charleston in the enforcement of the regulated areas.

(c) Regulations. (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Charleston or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Charleston by telephone at (843)740-7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Marine Safety Information Bulletins, Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) Effective date. This rule will be effective on September 25, 2016 and will be enforced from 8:45 a.m. until 3:45 p.m.

B. D. Falk,
Commander, U.S. Coast Guard,
Acting Captain of the Port Charleston.
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